

CHAPTER 130

GOVERNMENT - STATE

SENATE BILL 20-096

BY SENATOR(S) Rodriguez and Holbert, Bridges, Fields, Ginal, Lee, Marble, Priola, Smallwood, Sonnenberg, Story, Tate, Todd, Williams A.;

also REPRESENTATIVE(S) Duran and Carver, Arndt, Bird, Caraveo, Champion, Coleman, Cutter, Exum, Garnett, Gonzales-Gutierrez, Gray, Herod, Humphrey, Jackson, Jaquez Lewis, Kennedy, Kipp, Lontine, Melton, Michaelson Jenet, Ransom, Rich, Saine, Singer, Sirota, Snyder, Soper, Titone, Valdez A., Valdez D., Van Winkle, Young, Becker.

AN ACT

CONCERNING AN AUTHORIZATION FOR NOTARIES PUBLIC TO PERFORM NOTARIAL ACTS USING AUDIO-VIDEO COMMUNICATION, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. The general assembly recognizes the importance of protecting personal information that is disclosed and recorded, including both audio and video, during the remote notarization process. Data privacy is an essential part of Colorado's authorization of remote notarization and the security of personal data from unauthorized use or theft is of critical importance in the implementation of remote notarization requirements in Colorado.

SECTION 2. In Colorado Revised Statutes, 24-21-502, **add** (1.3), (1.7), (10.5), (11.3), (11.5), (11.7), and (15.5) as follows:

24-21-502. Definitions. In this part 5:

(1.3) "AUDIO-VIDEO COMMUNICATION" MEANS COMMUNICATION BY WHICH AN INDIVIDUAL IS ABLE TO SEE, HEAR, AND COMMUNICATE WITH A REMOTELY LOCATED INDIVIDUAL IN REAL TIME USING ELECTRONIC MEANS.

(1.7) "CREDENTIAL" MEANS A TANGIBLE RECORD EVIDENCING THE IDENTITY OF AN INDIVIDUAL.

(10.5) "REAL-TIME" OR "IN REAL TIME" MEANS, WITH RESPECT TO AN INTERACTION BETWEEN INDIVIDUALS BY MEANS OF AUDIO-VIDEO COMMUNICATION,

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

THAT THE INDIVIDUALS CAN SEE AND HEAR EACH OTHER SUBSTANTIALLY SIMULTANEOUSLY AND WITHOUT INTERRUPTION OR DISCONNECTION. DELAYS OF A FEW SECONDS THAT ARE INHERENT IN THE METHOD OF COMMUNICATION DO NOT PREVENT THE INTERACTION FROM BEING CONSIDERED TO HAVE OCCURRED IN REAL TIME.

(11.3) "REMOTELY LOCATED INDIVIDUAL" MEANS AN INDIVIDUAL WHO IS NOT IN THE PHYSICAL PRESENCE OF THE NOTARY PUBLIC WHO PERFORMS A NOTARIAL ACT UNDER THIS SECTION.

(11.5) "REMOTE NOTARIZATION" MEANS AN ELECTRONIC NOTARIAL ACT PERFORMED WITH RESPECT ONLY TO AN ELECTRONIC RECORD BY MEANS OF REAL-TIME AUDIO-VIDEO COMMUNICATION IN ACCORDANCE WITH SECTION 24-21-514.5 AND RULES ADOPTED BY THE SECRETARY OF STATE.

(11.7) "REMOTE NOTARIZATION SYSTEM" MEANS AN ELECTRONIC DEVICE OR PROCESS THAT:

(a) ALLOWS A NOTARY PUBLIC AND A REMOTELY LOCATED INDIVIDUAL TO COMMUNICATE WITH EACH OTHER SIMULTANEOUSLY BY SIGHT AND SOUND; AND

(b) WHEN NECESSARY AND CONSISTENT WITH OTHER APPLICABLE LAW, FACILITATES COMMUNICATION WITH A REMOTELY LOCATED INDIVIDUAL WHO HAS A VISION, HEARING, OR SPEECH IMPAIRMENT.

(15.5) "TAMPER-EVIDENT" MEANS THE USE OF A SET OF APPLICATIONS, PROGRAMS, HARDWARE, SOFTWARE, OR OTHER TECHNOLOGIES THAT WILL DISPLAY EVIDENCE OF ANY CHANGES MADE TO AN ELECTRONIC RECORD.

SECTION 3. In Colorado Revised Statutes, **amend** 24-21-506 as follows:

24-21-506. Personal appearance required - definition. (1) If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer.

(2) FOR PURPOSES OF THIS SECTION, "APPEAR PERSONALLY" MEANS:

(a) BEING IN THE SAME PHYSICAL LOCATION AS ANOTHER INDIVIDUAL AND CLOSE ENOUGH TO SEE, HEAR, COMMUNICATE WITH, AND EXCHANGE TANGIBLE IDENTIFICATION CREDENTIALS WITH THAT INDIVIDUAL; OR

(b) INTERACTING WITH A REMOTELY LOCATED INDIVIDUAL BY MEANS OF REAL-TIME AUDIO-VIDEO COMMUNICATION IN COMPLIANCE WITH SECTION 24-21-514.5 AND RULES ADOPTED BY THE SECRETARY OF STATE.

SECTION 4. In Colorado Revised Statutes, **add** 24-21-514.5 as follows:

24-21-514.5. Audio-video communication - definitions. (1) AS USED IN THIS SECTION:

(a) "CREDENTIAL ANALYSIS" MEANS A PROCESS OR SERVICE THAT COMPLIES WITH ANY RULES ADOPTED BY THE SECRETARY OF STATE THROUGH WHICH A THIRD PARTY AFFIRMS THE VALIDITY OF A GOVERNMENT-ISSUED IDENTIFICATION CREDENTIAL THROUGH THE REVIEW OF PUBLIC OR PROPRIETARY DATA SOURCES.

(b) "DYNAMIC, KNOWLEDGE-BASED AUTHENTICATION ASSESSMENT" MEANS AN IDENTITY ASSESSMENT THAT IS BASED ON A SET OF QUESTIONS FORMULATED FROM PUBLIC OR PRIVATE DATA SOURCES FOR WHICH THE REMOTELY LOCATED INDIVIDUAL TAKING THE ASSESSMENT HAS NOT PREVIOUSLY PROVIDED AN ANSWER AND THAT MEETS ANY RULES ADOPTED BY THE SECRETARY OF STATE.

(c) "OUTSIDE THE UNITED STATES" MEANS A LOCATION OUTSIDE THE GEOGRAPHIC BOUNDARIES OF THE UNITED STATES, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, AND ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

(d) "PUBLIC KEY CERTIFICATE" MEANS AN ELECTRONIC CREDENTIAL THAT IS USED TO IDENTIFY A REMOTELY LOCATED INDIVIDUAL WHO SIGNED AN ELECTRONIC RECORD WITH THE CREDENTIAL.

(e) "REMOTE PRESENTATION" MEANS TRANSMISSION TO THE NOTARY PUBLIC THROUGH COMMUNICATION TECHNOLOGY OF AN IMAGE OF A GOVERNMENT-ISSUED IDENTIFICATION CREDENTIAL THAT IS OF SUFFICIENT QUALITY TO ENABLE THE NOTARY PUBLIC TO:

(I) IDENTIFY THE REMOTELY LOCATED INDIVIDUAL SEEKING THE NOTARY PUBLIC'S SERVICES; AND

(II) PERFORM CREDENTIAL ANALYSIS.

(2)(a) EXCEPT AS PROVIDED IN SUBSECTION (2)(b) OF THIS SECTION, A NOTARY PUBLIC MAY PERFORM A REMOTE NOTARIZATION ONLY WITH RESPECT TO AN ELECTRONIC RECORD AND IN COMPLIANCE WITH THIS SECTION AND ANY RULES ADOPTED BY THE SECRETARY OF STATE FOR A REMOTELY LOCATED INDIVIDUAL WHO IS LOCATED:

(I) IN THIS STATE;

(II) OUTSIDE OF THIS STATE BUT WITHIN THE UNITED STATES; OR

(III) OUTSIDE THE UNITED STATES IF:

(A) THE NOTARY PUBLIC HAS NO ACTUAL KNOWLEDGE THAT THE NOTARIAL ACT IS PROHIBITED IN THE JURISDICTION IN WHICH THE REMOTELY LOCATED INDIVIDUAL IS PHYSICALLY LOCATED AT THE TIME OF THE ACT; AND

(B) THE REMOTELY LOCATED INDIVIDUAL CONFIRMS TO THE NOTARY PUBLIC THAT THE REQUESTED NOTARIAL ACT AND THE RECORD RELATE TO: A MATTER THAT WILL BE FILED WITH OR IS CURRENTLY BEFORE A COURT, GOVERNMENTAL ENTITY, OR OTHER ENTITY IN THE UNITED STATES; PROPERTY LOCATED IN THE UNITED STATES; OR A TRANSACTION SUBSTANTIALLY CONNECTED TO THE UNITED STATES.

(b) A NOTARY PUBLIC SHALL NOT USE A REMOTE NOTARIZATION SYSTEM TO NOTARIZE:

(I) A RECORD RELATING TO THE ELECTORAL PROCESS; OR

(II) A WILL, CODICIL, DOCUMENT PURPORTING TO BE A WILL OR CODICIL, OR ANY ACKNOWLEDGMENT REQUIRED UNDER SECTION 15-11-502 OR 15-11-504.

(3) BEFORE A NOTARY PUBLIC PERFORMS THE NOTARY PUBLIC'S INITIAL NOTARIZATION USING A REMOTE NOTARIZATION SYSTEM, THE NOTARY PUBLIC SHALL NOTIFY THE SECRETARY OF STATE THAT THE NOTARY PUBLIC WILL BE PERFORMING REMOTE NOTARIZATIONS AND SHALL IDENTIFY EACH REMOTE NOTARIZATION SYSTEM THAT THE NOTARY PUBLIC INTENDS TO USE. THE REMOTE NOTARIZATION SYSTEM MUST CONFORM TO THIS PART 5 AND ANY RULES ADOPTED BY THE SECRETARY OF STATE. THE NOTICE MUST BE SUBMITTED IN THE FORMAT REQUIRED BY THE SECRETARY OF STATE AND MUST:

(a) INCLUDE AN AFFIRMATION THAT THE NOTARY PUBLIC HAS READ AND WILL COMPLY WITH THIS SECTION AND ALL RULES ADOPTED BY THE SECRETARY OF STATE; AND

(b) BE ACCOMPANIED BY PROOF THAT THE NOTARY PUBLIC HAS SUCCESSFULLY COMPLETED ANY TRAINING AND EXAMINATION REQUIRED BY THE SECRETARY OF STATE.

(4) A NOTARY PUBLIC WHO PERFORMS A NOTARIAL ACT FOR A REMOTELY LOCATED INDIVIDUAL BY MEANS OF AUDIO-VIDEO COMMUNICATION MUST:

(a) BE LOCATED WITHIN THIS STATE AT THE TIME THE NOTARIAL ACT IS PERFORMED;

(b) EXECUTE THE NOTARIAL ACT IN A SINGLE, REAL-TIME SESSION;

(c) CONFIRM THAT ANY RECORD THAT IS SIGNED, ACKNOWLEDGED, OR OTHERWISE PRESENTED FOR NOTARIZATION BY THE REMOTELY LOCATED INDIVIDUAL IS THE SAME RECORD SIGNED BY THE NOTARY PUBLIC;

(d) CONFIRM THAT THE QUALITY OF THE AUDIO-VIDEO COMMUNICATION IS SUFFICIENT TO MAKE THE DETERMINATIONS REQUIRED FOR THE NOTARIAL ACT UNDER THIS PART 5 AND ANY OTHER LAW OF THIS STATE; AND

(e) IDENTIFY THE VENUE FOR THE NOTARIAL ACT AS THE JURISDICTION WITHIN THE STATE OF COLORADO WHERE THE NOTARY PUBLIC IS PHYSICALLY LOCATED WHILE PERFORMING THE ACT.

(5) A REMOTE NOTARIZATION SYSTEM USED TO PERFORM REMOTE NOTARIZATIONS MUST:

(a) REQUIRE THE NOTARY PUBLIC, THE REMOTELY LOCATED INDIVIDUAL, AND ANY REQUIRED WITNESS TO ACCESS THE SYSTEM THROUGH AN AUTHENTICATION PROCEDURE THAT COMPLIES WITH RULES ADOPTED BY THE SECRETARY OF STATE

REGARDING SECURITY AND ACCESS;

(b) ENABLE THE NOTARY PUBLIC TO VERIFY THE IDENTITY OF THE REMOTELY LOCATED INDIVIDUAL AND ANY REQUIRED WITNESS BY MEANS OF PERSONAL KNOWLEDGE OR SATISFACTORY EVIDENCE OF IDENTITY IN COMPLIANCE WITH SUBSECTION (6) OF THIS SECTION; AND

(c) CONFIRM THAT THE NOTARY PUBLIC, THE REMOTELY LOCATED INDIVIDUAL, AND ANY REQUIRED WITNESS ARE VIEWING THE SAME RECORD AND THAT ALL SIGNATURES, CHANGES, AND ATTACHMENTS TO THE RECORD ARE MADE IN REAL TIME.

(6) (a) A NOTARY PUBLIC SHALL DETERMINE FROM PERSONAL KNOWLEDGE OR SATISFACTORY EVIDENCE OF IDENTITY AS DESCRIBED IN SUBSECTION (6)(b) OF THIS SECTION THAT THE REMOTELY LOCATED INDIVIDUAL APPEARING BEFORE THE NOTARY PUBLIC BY MEANS OF AUDIO-VIDEO COMMUNICATION IS THE INDIVIDUAL THAT HE OR SHE PURPORTS TO BE.

(b) A NOTARY PUBLIC HAS SATISFACTORY EVIDENCE OF IDENTITY IF THE NOTARY PUBLIC CAN IDENTIFY THE REMOTELY LOCATED INDIVIDUAL WHO PERSONALLY APPEARS BEFORE THE NOTARY PUBLIC BY MEANS OF AUDIO-VIDEO COMMUNICATION BY USING AT LEAST ONE OF THE FOLLOWING METHODS:

(I) THE OATH OR AFFIRMATION OF A CREDIBLE WITNESS WHO PERSONALLY KNOWS THE REMOTELY LOCATED INDIVIDUAL, IS PERSONALLY KNOWN TO THE NOTARY PUBLIC, AND IS IN THE PHYSICAL PRESENCE OF THE NOTARY PUBLIC OR THE REMOTELY LOCATED INDIVIDUAL DURING THE REMOTE NOTARIZATION;

(II) REMOTE PRESENTATION AND CREDENTIAL ANALYSIS OF A GOVERNMENT-ISSUED IDENTIFICATION CREDENTIAL, AND THE DATA CONTAINED ON THE CREDENTIAL, THAT CONTAINS THE SIGNATURE AND A PHOTOGRAPH OF THE REMOTELY LOCATED INDIVIDUAL, AND AT LEAST ONE OF THE FOLLOWING:

(A) A DYNAMIC, KNOWLEDGE-BASED AUTHENTICATION ASSESSMENT BY A TRUSTED THIRD PARTY THAT COMPLIES WITH RULES ADOPTED BY THE SECRETARY OF STATE;

(B) A VALID PUBLIC KEY CERTIFICATE THAT COMPLIES WITH RULES ADOPTED BY THE SECRETARY OF STATE; OR

(C) AN IDENTITY VERIFICATION BY A TRUSTED THIRD PARTY THAT COMPLIES WITH RULES ADOPTED BY THE SECRETARY OF STATE; OR

(III) ANY OTHER METHOD THAT COMPLIES WITH RULES ADOPTED BY THE SECRETARY OF STATE.

(7) WITHOUT LIMITING THE AUTHORITY OF A NOTARY PUBLIC UNDER SECTION 24-21-508 TO REFUSE TO PERFORM A NOTARIAL ACT, A NOTARY PUBLIC MAY REFUSE TO PERFORM A NOTARIAL ACT UNDER THIS SECTION IF THE NOTARY PUBLIC IS NOT SATISFIED THAT THE REQUIREMENTS OF THIS SECTION ARE MET.

(8) THE CERTIFICATE OF NOTARIAL ACT FOR A REMOTE NOTARIZATION MUST, IN ADDITION TO COMPLYING WITH THE REQUIREMENTS OF SECTION 24-21-515, INDICATE THAT THE NOTARIAL ACT WAS PERFORMED USING AUDIO-VIDEO COMMUNICATION TECHNOLOGY.

(9) (a) A NOTARY PUBLIC SHALL CREATE AN AUDIO-VIDEO RECORDING OF A REMOTE NOTARIZATION IF:

(I) THE NOTARY PUBLIC FIRST DISCLOSES TO THE REMOTELY LOCATED INDIVIDUAL THE FACT OF THE RECORDING AND THE DETAILS OF ITS INTENDED STORAGE, INCLUDING WHERE AND FOR HOW LONG IT WILL BE STORED;

(II) THE REMOTELY LOCATED INDIVIDUAL EXPLICITLY CONSENTS TO BOTH THE RECORDING AND THE STORAGE OF THE RECORDING; AND

(III) THE RECORDING IS STORED AND SECURED IN COMPLIANCE WITH RULES ADOPTED BY THE SECRETARY OF STATE.

(b) THE AUDIO-VIDEO RECORDING REQUIRED BY THIS SUBSECTION (9) MUST BE IN ADDITION TO THE JOURNAL ENTRY FOR THE NOTARIAL ACT WHERE REQUIRED BY SECTION 24-21-519. THE RECORDING MUST INCLUDE THE INFORMATION DESCRIBED IN THIS SUBSECTION (9)(b). A NOTARY PUBLIC SHALL MAKE A GOOD-FAITH EFFORT TO NOT INCLUDE ANY OTHER INFORMATION ON THE RECORDING. ANY OTHER INFORMATION INCLUDED ON THE RECORDING IS NOT ADMISSIBLE IN ANY COURT OF LAW, LEGAL PROCEEDING, OR ADMINISTRATIVE HEARING FOR ANY PURPOSE, NOR IS THE INFORMATION ADMISSIBLE IN ANY PROCEEDING IN ANY OTHER COURT OF LAW, LEGAL PROCEEDING, OR ADMINISTRATIVE HEARING IF COLORADO LAW APPLIES WITH RESPECT TO REMOTE NOTARIZATION. THE RECORDING MUST INCLUDE:

(I) AT THE COMMENCEMENT OF THE RECORDING, A RECITATION BY THE NOTARY PUBLIC OF INFORMATION SUFFICIENT TO IDENTIFY THE NOTARIAL ACT, INCLUDING THE NAME OF THE NOTARY PUBLIC, THE DATE AND TIME OF THE NOTARIAL ACT, A DESCRIPTION OF THE NATURE OF THE DOCUMENT OR DOCUMENTS TO WHICH THE NOTARIAL ACT IS TO RELATE, THE IDENTITY OF THE REMOTELY LOCATED INDIVIDUAL WHOSE SIGNATURE IS TO BE THE SUBJECT OF THE NOTARIAL ACT AND OF ANY PERSON WHO WILL ACT AS A CREDIBLE WITNESS TO IDENTIFY THE INDIVIDUAL SIGNER, AND THE METHOD OR METHODS BY WHICH THE REMOTELY LOCATED INDIVIDUAL AND ANY CREDIBLE WITNESS WILL BE IDENTIFIED TO THE NOTARY PUBLIC;

(II) A DECLARATION BY THE REMOTELY LOCATED INDIVIDUAL THAT THE INDIVIDUAL'S SIGNATURE ON THE RECORD IS KNOWINGLY AND VOLUNTARILY MADE;

(III) IF THE REMOTELY LOCATED INDIVIDUAL FOR WHOM THE NOTARIAL ACT IS BEING PERFORMED IS IDENTIFIED BY PERSONAL KNOWLEDGE, AN EXPLANATION BY THE NOTARY PUBLIC AS TO HOW THE NOTARY PUBLIC KNOWS THE REMOTELY LOCATED INDIVIDUAL AND HOW LONG THE NOTARY PUBLIC HAS KNOWN THE REMOTELY LOCATED INDIVIDUAL;

(IV) IF THE REMOTELY LOCATED INDIVIDUAL FOR WHOM THE NOTARIAL ACT IS BEING PERFORMED IS IDENTIFIED BY A CREDIBLE WITNESS;

(A) A STATEMENT BY THE NOTARY PUBLIC AS TO HOW THE NOTARY PUBLIC KNOWS THE CREDIBLE WITNESS AND HOW LONG THE NOTARY PUBLIC HAS KNOWN THE CREDIBLE WITNESS; AND

(B) AN EXPLANATION BY THE CREDIBLE WITNESS AS TO HOW THE CREDIBLE WITNESS KNOWS THE REMOTELY LOCATED INDIVIDUAL AND HOW LONG THE CREDIBLE WITNESS HAS KNOWN THE REMOTELY LOCATED INDIVIDUAL; AND

(V) THE STATEMENTS, ACTS, AND CONDUCT NECESSARY TO PERFORM THE REQUESTED NOTARIAL ACT OR SUPERVISION OF SIGNING OR WITNESSING OF THE SUBJECT RECORD.

(c) THE PROVISIONS OF SECTION 24-21-519 THAT RELATE TO THE SECURITY, INSPECTION, COPYING, AND RETENTION AND DISPOSITION OF A NOTARY PUBLIC'S JOURNAL APPLY EQUALLY TO THE SECURITY, INSPECTION, COPYING, AND RETENTION AND DISPOSITION OF AUDIO-VIDEO RECORDINGS ALLOWED BY THIS SECTION.

(d) THE FAILURE OF A NOTARY PUBLIC TO PERFORM A DUTY OR MEET A REQUIREMENT SPECIFIED IN THIS SUBSECTION (9) DOES NOT INVALIDATE A REMOTE NOTARIZATION PERFORMED BY THE NOTARY PUBLIC. A NOTARY PUBLIC IS NOT LIABLE TO ANY PERSON FOR DAMAGES CLAIMED TO ARISE FROM A FAILURE TO PERFORM A DUTY OR MEET A REQUIREMENT SPECIFIED IN SUBSECTION (9)(b) OF THIS SECTION.

(10) REGARDLESS OF THE PHYSICAL LOCATION OF THE REMOTELY LOCATED INDIVIDUAL AT THE TIME OF THE NOTARIAL ACT, THE VALIDITY OF A REMOTE NOTARIZATION PERFORMED BY A NOTARY IN THIS STATE IS GOVERNED BY THE LAWS OF THIS STATE, INCLUDING ANY RULES ADOPTED BY THE SECRETARY OF STATE PURSUANT TO THIS PART 5.

(11) TO BE ELIGIBLE FOR APPROVAL BY THE SECRETARY OF STATE UNDER SECTION 24-21-527 (1)(h), A PROVIDER OF A REMOTE NOTARIZATION SYSTEM OR STORAGE SYSTEM MUST:

(a) CERTIFY TO THE SECRETARY OF STATE THAT THE PROVIDER AND THE SYSTEM COMPLY WITH THE REQUIREMENTS OF THIS SECTION AND THE RULES ADOPTED UNDER SECTION 24-21-527;

(b) MAINTAIN A USUAL PLACE OF BUSINESS IN THIS STATE OR, IF A FOREIGN ENTITY, APPOINT AND MAINTAIN A REGISTERED AGENT, IN ACCORDANCE WITH SECTION 7-90-701 BY FILING A STATEMENT OF FOREIGN ENTITY AUTHORITY IN ACCORDANCE WITH SECTION 7-90-803, WITH AUTHORITY TO ACCEPT SERVICE OF PROCESS IN CONNECTION WITH A CIVIL ACTION OR OTHER PROCEEDING; AND

(c) NOT USE, SELL, OR OFFER TO SELL TO ANOTHER PERSON OR TRANSFER TO ANOTHER PERSON FOR USE OR SALE ANY PERSONAL INFORMATION OBTAINED UNDER THIS SECTION THAT IDENTIFIES A REMOTELY LOCATED INDIVIDUAL, A WITNESS TO A REMOTE NOTARIZATION, OR A PERSON NAMED IN A RECORD PRESENTED FOR REMOTE NOTARIZATION, EXCEPT:

(I) AS NECESSARY TO FACILITATE PERFORMANCE OF A NOTARIAL ACT;

(II) TO EFFECT, ADMINISTER, ENFORCE, SERVICE, OR PROCESS A RECORD PROVIDED BY OR ON BEHALF OF THE INDIVIDUAL OR THE TRANSACTION OF WHICH THE RECORD IS A PART;

(III) IN ACCORDANCE WITH THIS PART 5 AND THE RULES ADOPTED PURSUANT TO THIS PART 5 OR OTHER APPLICABLE FEDERAL, STATE, OR LOCAL LAW, OR TO COMPLY WITH A LAWFUL SUBPOENA OR COURT ORDER; OR

(IV) IN CONNECTION WITH A PROPOSED OR ACTUAL SALE, MERGER, TRANSFER, OR EXCHANGE OF ALL OR A PORTION OF A BUSINESS OR OPERATING UNIT OF THE PROVIDER, IF THE PERSONAL INFORMATION CONCERNS ONLY CUSTOMERS OF THE BUSINESS OR UNIT AND THE TRANSFEREE AGREES TO COMPLY WITH THE RESTRICTIONS SET FORTH IN THIS SUBSECTION (11).

(12) SUBJECT TO APPLICABLE LAW OTHER THAN THIS ARTICLE 21, IF A RECORD IS PRIVILEGED PURSUANT TO SECTION 13-90-107 (1)(b), THE CORRESPONDING ELECTRONIC RECORD SECURED AND STORED BY THE REMOTE NOTARIZATION SYSTEM AS PROVIDED IN THIS ARTICLE 21 REMAINS PRIVILEGED.

SECTION 5. In Colorado Revised Statutes, 24-21-515, **amend** (3)(d) and (4) as follows:

24-21-515. Certificate of notarial act. (3) A certificate of a notarial act is sufficient if it meets the requirements of subsections (1) and (2) of this section and:

(d) Sets forth ~~the actions of the notarial officer and the actions~~ THAT are sufficient to meet the requirements of the notarial act as provided in sections 24-21-505, 24-21-506, and 24-21-507 AND, IF APPLICABLE, SECTION 24-21-514.5 or law of this state other than this part 5.

(4) By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in sections 24-21-504, 24-21-505, and 24-21-506 AND, IF APPLICABLE, SECTION 24-21-514.5.

SECTION 6. In Colorado Revised Statutes, 24-21-519, **amend** (2) as follows:

24-21-519. Journal. (2) (a) A journal may be created on a tangible medium or in an electronic format. If a journal is maintained on a tangible medium, it must be a permanent, bound register with numbered pages. If a journal is maintained in an electronic format, it must be in a permanent, tamper-evident electronic format complying with the rules of the secretary of state.

(b) ANOTARY PUBLIC WHO PERFORMS A REMOTE NOTARIZATION SHALL MAINTAIN A JOURNAL IN AN ELECTRONIC FORMAT WITH REGARD TO EACH REMOTE NOTARIZATION.

SECTION 7. In Colorado Revised Statutes, 24-21-527, **amend** (1)(e); and **add** (1)(g), (1)(h), and (3) as follows:

24-21-527. Rules - definitions - repeal. (1) The secretary of state may adopt

rules to implement this part 5 in accordance with article 4 of this title 24. Rules adopted regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The rules may:

(e) Include provisions to prevent fraud or mistake in the performance of notarial acts; ~~and~~

(g) PRESCRIBE THE MANNER OF PERFORMING NOTARIAL ACTS USING AUDIO-VIDEO COMMUNICATION TECHNOLOGY, INCLUDING PROVISIONS TO ENSURE THE SECURITY, INTEGRITY, AND ACCESSIBILITY OF RECORDS RELATING TO THOSE ACTS; AND

(h) PRESCRIBE REQUIREMENTS FOR THE APPROVAL AND USE OF REMOTE NOTARIZATION SYSTEMS AND STORAGE SYSTEMS.

(3) (a) AS USED IN THIS SUBSECTION (3):

(I) "INTERIM PERIOD" MEANS THE PERIOD BEGINNING ON MARCH 30, 2020, AND ENDING ON DECEMBER 31, 2020.

(II) "TEMPORARY RULE" MEANS RULE 5 OF THE NOTARY PROGRAM RULES AS ADOPTED BY THE SECRETARY OF STATE EFFECTIVE MARCH 30, 2020, AND PUBLISHED AT 8 CCR 1505-11, AND ANY ANALOGOUS SUCCESSOR EMERGENCY RULE OF THE NOTARY PROGRAM THAT AUTHORIZES REMOTE NOTARIZATIONS.

(b) DURING THE INTERIM PERIOD:

(I) A NOTARY PUBLIC COMMISSIONED BY THE SECRETARY OF STATE MAY PERFORM NOTARIAL ACTS WITH RESPECT TO A REMOTELY LOCATED INDIVIDUAL USING AUDIO-VIDEO COMMUNICATION IN ACCORDANCE WITH, AND SUBJECT TO THE LIMITATIONS AND RESTRICTIONS SET FORTH IN, THE TEMPORARY RULE; AND

(II) INsofar AS IT RELATES TO ANY NOTARIAL ACT PERMITTED BY THE TEMPORARY RULE AND PERFORMED DURING THE INTERIM PERIOD, ANY REQUIREMENT IN THIS PART 5 OR TITLE 38 THAT AN INDIVIDUAL MAKING A STATEMENT OR EXECUTING A SIGNATURE APPEAR PERSONALLY BEFORE A NOTARIAL OFFICER IS SATISFIED BY THE PROCEDURES SPECIFIED IN AND PERMITTED BY THE TEMPORARY RULE.

(c) THE SECRETARY OF STATE MAY AMEND THE TEMPORARY RULE IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE 24, BUT THE AMENDMENT MUST NOT PERMIT THE PERFORMANCE OF A REMOTE NOTARIZATION WITH RESPECT TO A RECORD DESCRIBED IN SECTION 5.2.2 OF THE TEMPORARY RULE OTHER THAN IN ACCORDANCE WITH THE PROVISIONS OF THE TEMPORARY RULE AS IT EXISTED ON THE EFFECTIVE DATE OF THIS SUBSECTION (3).

(d) A NOTARIAL ACT PERFORMED DURING THE INTERIM PERIOD WITH RESPECT TO A REMOTELY LOCATED INDIVIDUAL THAT COMPLIED WITH THE TEMPORARY RULE IS NOT INVALID DUE TO THE LACK OF EXPRESS STATUTORY AUTHORITY FOR THE NOTARIAL ACT.

(e) THE SECRETARY OF STATE SHALL UPDATE THE APPLICABLE JOINT COMMITTEE OF REFERENCE DURING THE DEPARTMENT OF STATE'S 2020 PRESENTATION MADE PURSUANT TO SECTION 2-7-203 REGARDING THE IMPLEMENTATION OF THIS SUBSECTION (3).

(f) SUBSECTIONS (3)(b), (3)(c), AND (3)(e) OF THIS SECTION AND THIS SUBSECTION (3)(f) ARE REPEALED, EFFECTIVE DECEMBER 31, 2020.

SECTION 8. In Colorado Revised Statutes, 10-11-122, **add** (4) as follows:

10-11-122. Title commitments - rules. (4) (a) If a TITLE INSURANCE AGENT OR TITLE INSURANCE COMPANY IS REQUIRED TO PROVIDE THE STATEMENT REQUIRED BY SUBSECTION (1) OF THIS SECTION, THE AGENT OR COMPANY SHALL ALSO PROVIDE A STATEMENT SUBSTANTIALLY AS FOLLOWS:

COLORADO NOTARIES MAY REMOTELY NOTARIZE REAL ESTATE DEEDS AND OTHER DOCUMENTS USING REAL-TIME AUDIO-VIDEO COMMUNICATION TECHNOLOGY. YOU MAY CHOOSE NOT TO USE REMOTE NOTARIZATION FOR ANY DOCUMENT.

(b) FAILURE OF A PERSON TO PROVIDE THE STATEMENT REQUIRED BY THIS SUBSECTION (4) DOES NOT SUBJECT THE PERSON TO ANY LIABILITY UNDER THIS ARTICLE 11 OR TO THE PENALTY PROVISIONS OF SECTION 10-3-111 AND DOES NOT AFFECT OR INVALIDATE ANY PROVISIONS OF THE COMMITMENT FOR TITLE INSURANCE.

SECTION 9. Appropriation. (1) For the 2020-21 state fiscal year, \$132,795 is appropriated to the department of state. This appropriation is from the department of state cash fund created in section 24-21-104 (3)(b), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) \$57,910 for use by the business and licensing division for personal services, which amount is based on an assumption that the division will require an additional 1.1 FTE;

(b) \$7,685 for use by the business and licensing division for operating expenses; and

(c) \$67,200 for use by the information technology division for personal services.

SECTION 10. Effective date - applicability. (1) This act:

(a) Takes effect upon passage; except that sections 1 through 6 and 8 of this act take effect December 31, 2020; and

(b) Applies to conduct occurring on or after March 30, 2020.

SECTION 11. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 26, 2020